

18672<sup>3</sup>

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE: B-202955.2

DATE: June 30, 1981

MATTER OF: Macy M. Sharf Company, Inc.--Reconsideration

**DIGEST:**

1. GAO will not consider protest that awardee of contract under small business set-aside is dominant in industry and, therefore, not small business, since small business size status is for Small Business Administration to determine.
2. Agency report on protest will not be requested and request for conference will not be granted where, as here, it is clear from protester's initial submission that protest is for dismissal.

Macy M. Sharf Company, Inc. (Sharf), requests reconsideration of our decision in Macy M. Sharf Company, Inc., B-202955, May 19, 1981, 81-1 CPD 387, dismissing Sharf's protest of the award of a contract to Moor-Fite Corporation of Virginia (Moor-Fite) under solicitation No. GSD-WDPR-10001-A-2-12-81, a small business set-aside, issued by the General Services Administration (GSA).

In that case, Sharf alleged that Moor-Fite was not a small business because its average annual receipts exceeded the appropriate size standard and because it was dominant in the industry and locale. Sharf requested that GAO and the Small Business Administration (SBA) jointly render a decision regarding Moor-Fite's size status. Sharf also alleged that Moor-Fite had performed substandard work on previous contracts.

We dismissed the first issue on the basis that the SBA is empowered to conclusively determine matters of small business size status under 15 U.S.C. § 637(b)

*[Protest Concerning Small Business Size Status]*  
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(1976). We did not consider the second issue because our Office will not review affirmative determinations of bidders' responsibility except in circumstances not applicable to this case.

Sharf's grounds for reconsideration are that our decision ignored the issue of Moor-Fite's dominance, that we did not provide Sharf with a copy of GSA's report on the protest, and that we did not hold a conference on the protest as Sharf requested.

Our decision is affirmed.

Moor-Fite's dominance in the industry is a matter to be considered by SBA in determining Moor-Fite's size status, which is exclusively a matter for SBA. Sharf did not receive a copy of GSA's report because there was no report. Where, as in this case, it is clear from the protester's initial submission that the issues raised are not for consideration under our Bid Protest Procedures, we will not obtain an agency report. Old Dominion Systems, Inc., B-200263, October 21, 1980, 80-2 CPD 306. Additionally, in such cases, we will not conduct a bid protest conference. Id.

*Harry R. Van Cleve*

Harry R. Van Cleve  
Acting General Counsel